

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-445-C

IN RE: Application of Broadband Dynamics, LLC for)
 Authority to Operate as a Reseller of) **SETTLEMENT**
 Interexchange Telecommunications Services) **AGREEMENT**
 within the State of South Carolina and for)
 Approval of Alternative Regulation)

This Settlement Agreement (“Settlement Agreement”) is made by and among the Office of Regulatory Staff (“ORS”) and Broadband Dynamics, LLC (“Broadband” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”).

WHEREAS, on October 25, 2011, Broadband filed its Application requesting: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to operate as a reseller of interexchange telecommunications services within the state of South Carolina; (ii) that its interexchange service offerings be regulated in accordance with procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C; (iii) waiver of Regulation 103-610 regarding location of records; (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“USOA”); and (v) waiver of Regulation 103-612.2.3 requiring the filing of operating area maps and 103-631 requiring publication of directories;

WHEREAS, on October 28, 2011, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS on October 31, 2011, the Commission issued a Notice of Filing and Hearing and established a return date of November 28, 2011, for the filing of letters of protest or petitions to intervene and established a hearing date of January 9, 2012 for the Application to be heard before a hearing examiner;

WHEREAS, on November 18, 2011, the Commission issued its Order No. 2011-818 by which the Commission appointed F. David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS, on November 30, 2011, the Company filed direct testimony of Robert S. Rife;

WHEREAS, the purpose of this proceeding is to review the Application filed by the Company and its requests: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to operate as a reseller of interexchange telecommunications services within the state of South Carolina; (ii) that its interexchange service offerings be regulated in accordance with procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C; (iii) waiver of Regulation 103-610 regarding location of records; (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts ("USOA"); and (v) a waiver of Regulation 103-612.2.3 requiring the filing of operating area maps and 103-631 requiring publication of directories;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical and managerial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the financial statements of Broadband filed as Attachment 5 to the Application and granted confidential treatment pursuant to the November 4th, 2011 hearing examiner directive;

WHEREAS, ORS calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs filed as Attachment 6 to the Application;

WHEREAS, ORS has reviewed the pre-filed testimony of Robert S. Rife;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company requests authority to operate as a reseller of interexchange telecommunication services within the state of South Carolina; (b) the Company's officers appear to possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, the Company appears to have access to sufficient financial resources necessary to provide the services proposed in its Application; (d) the Company's proposed tariffs set forth in Attachment 6 to its Application with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (e) the services provided by the Company will meet the service standards required by the Commission; (f) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

- 1) The Parties agree that Broadband's Application and attachments to the Application are incorporated into this Settlement Agreement and made a part hereof;
- 2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Robert S. Rife;
- 3) The Company submitted financial data, which was provided as Attachment 5 to its Application, and which financial data is incorporated by reference;
- 4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange telecommunications services within the state of South Carolina;
- 5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2010) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in Scottsdale, Arizona, and the Company agrees to notify the ORS of any change in the

location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2010) or § 58-9-1070 (Supp. 2010). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

6) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (“USOA”). The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2010) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission’s jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses associated with its South Carolina operations for compliance with programs such as but not limited to the Universal Service Fund (“USF”), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs including but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

7) ORS does not oppose the Company’s request for waiver of 103-612.3 requiring the filing of operating area maps and 103-631 requiring publication of directories;

8) ORS does not oppose the Company's request for alternative regulation of its interexchange service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) removal of the maximum rate tariff requirements for the Company's business services, private line, and customer network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (ii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iii) grant Broadband the same treatment as all other carriers operating under alternative regulation in connection with any future relaxation of reporting requirements;

9) The Company agrees to resell the services only of those interexchange providers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, if Broadband changes its underlying carriers;

10) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Broadband. The Parties agree that such reports shall be filed pursuant to ORS's instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission requirements;

11) The Company agrees to maintain its books and records associated with its South Carolina operations in a manner that would permit ORS to examine any of Broadband's reports filed with the Commission and provided to ORS;

12) The Company agrees to file with the Commission and ORS a completed authorized utility representative form within thirty (30) days of the Commission's order;

13) In the event that the Company offers prepaid calling card or prepaid long distance services in the future, Broadband agrees that it shall obtain Commission approval and post a surety bond in the amount of \$5,000 as required by the Commission;

14) The Company agrees to comply with South Carolina Code Ann. § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Broadband agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

15) The Company agrees to comply with all orders, directives, guidelines, rules and regulations of the Commission unless the Commission has expressly waived such requirement, rule or regulation;

16) The Company agrees to file a final revised tariff with both the ORS and the Commission within thirty days of the Commission Order granting certification, and the revised tariff shall reflect and be in accordance with ORS's recommendations. Further, the Company agrees to file and maintain its tariff with the Commission electronic tariff filing system;

17) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

18) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein;

19) The Parties represent that the terms of this Settlement Agreement are based upon full and accurate information known as of the date this Settlement Agreement is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Settlement Agreement is based, either Party may withdraw from the Settlement Agreement with written notice to the other Party;

20) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation;

21) This Settlement Agreement shall be interpreted according to South Carolina law;

22) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

[SIGNATURES ON FOLLOWING PAGES]

WE AGREE:

Representing the South Carolina Office of Regulatory Staff

Nanette S. Edwards

Nanette S. Edwards, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
Telephone: (803) 737-0575
Fax: (803) 737-0895
Email: nsedwar@regstaff.sc.gov

1/5/12
Date

WE AGREE:

Representing Broadband, LLC



Scott Elliott, Esquire
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
Telephone: (803) 771-0555
Fax: (803) 771-8010
Email: selliott@elliottlaw.us

Date

January 5, 2012

Lance J.M. Steinhart, Esquire
Lance J.M. Steinhart, P.C.
1725 Windward Concourse
Suite 150
Alpharetta, GA, 30005
Phone: 770-232-9200
Fax: 770-232-9208
Email: lsteinhart@telecomcounsel.com